

Appl. No. 09/629,323

Response dated August 18, 2004

In response to Examiner's Requirement for Information dated July 27, 2004

Specifically, the referenced publication is a posting on the message board entitled "Long-Term Disability Insurers and Lump-sum payments from SSDI" and was submitted by Brian McCarthy-12-24pm Jun 8, 2004. The referenced posting discusses whether preauthorization agreements for accessing claimant's accounts for overpayment recovery purposes are legal.

The Examiner requested that the Applicant provide any known information regarding the legality of the preauthorization agreements with respect to the Social Security Act including citations to the relevant portions of the Social Security Act. In response to the Examiner's requirement for information, Applicant herewith submits the Affidavit of James F. Allsup In Response to Second Requirement For Information Under 37 C.F.R. §1.105 ("Allsup 2<sup>nd</sup> Aff'd.") and the exhibits attached to the affidavit. Applicant respectfully submits that the affidavit and exhibits satisfy the request for known information regarding the legality of such preauthorization agreements, as set out in greater detail below.

Applicant has reviewed the posting on the *Findlaw's* Message Board included with the Examiner's Requirement for Information. (Allsup 2<sup>nd</sup> Aff'd., ¶3). As an initial matter, Applicant would like to inform the Examiner that he is familiar with Mr. Brian McCarthy, the author of the posting. Mr. McCarthy is an attorney of record for a competitor that presently is a defendant in a lawsuit filed by Applicant's company. Applicant respectfully requests the Examiner to keep this fact in mind when assessing the credibility of Mr. McCarthy's statements in the posting. (Allsup 2<sup>nd</sup> Aff'd., ¶4).

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Applicant further points out that the referenced web site message board posting is a naked assertion of illegality. Mr. McCarthy cites no case law or any other evidence to substantiate his assertions that the process of preauthorizing a recovery of an overpayment from a deposit account is illegal or violates the anti-assignment provision of the Social Security Act. (Allsup 2<sup>nd</sup> Aff'd., ¶5). It is the Applicant's opinion, based upon his years of providing overpayment recovery services, that Mr. McCarthy's statements are unsupportable, erroneous and misleading to the Examiner and to the general public. (Allsup 2<sup>nd</sup> Aff'd., ¶6).

Prior to embarking on the method of the present invention, Applicant took steps to assure himself that his new method of recovering overpaid LTD benefits was legal and in compliance with all Social Security Administration laws and rules, as well as all laws and rules applicable to direct deposit accounts and automated clearing house procedures. (Allsup 2<sup>nd</sup> Aff'd., ¶7). Although there are no specific portions of the Social Security Act that address the preauthorized withdrawal of deposited SSDI, the preauthorized withdrawal of overpaid LTD benefits from a claimant's deposit account after the deposit of SSDI, is addressed by other federal laws and the SSA rules. (Allsup 2<sup>nd</sup> Aff'd., ¶8).

Federal law, specifically the Debt Collection Improvement Act of 1996, authorizes direct deposit of SSDI. The law requires that most federal payments, including SSDI, be made by electronic funds transfer. (Allsup 2<sup>nd</sup> Aff'd., ¶9). In response to the enactment of the Debt Collection Improvement Act, the Social Security Administration (SSA)

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modified its Program Operations Manual System ("POMS") to account for electronic funds transfer. (Allsup 2<sup>nd</sup> Aff'd., ¶10). POMS provides that direct deposit payments of SSDI be made to checking or other deposit accounts. Direct deposit payments of SSDI can be made to an account so long as the disabled individual has an appropriate ownership interest in the account, so as to have control over the account. (Allsup 2<sup>nd</sup> Aff'd., ¶11).

Section 207 of the Social Security Act, specifically prohibits the assignment or transfer of the right to future Social Security payments. For example, a request for direct deposit that assigns or transfers the right to future payments to someone other than the beneficiary, e.g. to a credit card company or insurance company, will not be honored. (Allsup 2<sup>nd</sup> Aff'd., ¶12). However, beneficiaries may choose to preauthorize an entity to withdraw funds from their account for a wide variety of purposes. SSA has no jurisdiction over preauthorized withdrawals arranged with the beneficiary's consent, provided the beneficiary has requested direct deposit into an acceptable type of account. (Allsup 2<sup>nd</sup> Aff'd., ¶13).

The method of the present invention provides for the establishment or use of an acceptable account and the direct deposit of SSDI into the account, so that the beneficiary has legal control of the funds, which is in compliance with the law. The consensual, preauthorized withdrawal of overpaid amounts of LTD benefits is effected after the deposit of SSDI into the beneficiary's account. (Allsup 2<sup>nd</sup> Aff'd., ¶14). Applicant's method utilizes a novel preauthorized withdrawal form that informs the

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disabled individual of a.) the amount of the preauthorized withdrawal; b.) the date on or after which the amount will be withdrawn; and c.) the right to cancel the authority to withdraw. (Allsup 2<sup>nd</sup> Aff'd., ¶15). When developing his claimed method, Applicant identified and addressed the legal issues discussed above, with the assistance of outside legal counsel. (Allsup 2<sup>nd</sup> Aff'd., ¶¶16).

Applicant believes that his Affidavit, along with the submission of GN 02402.030, GN 02402.001, GN 02402.045, and Sec. 207 of the Social Security Act (42 U.S.C. 407), complies with the Examiner's requirement for information and clearly shows that Applicant's claimed method is not illegal. (Allsup 2<sup>nd</sup> Aff'd., ¶17). Therefore, Applicant respectfully requests allowance of the claims and passage of the case to issue.

Respectfully submitted,

POLSTER, LIEDER, WOODRUFF, & LUCCHESI, L.C.

By

  
Ned W. Randle, Reg. No. 35,989  
12412 Powerscourt Drive, Suite 200  
St. Louis, MO 63131-3615  
Tel.: (314) 238-2400  
Fax: (314) 238-2401